

**STATE OF NEVADA BOARD TO REVIEW CLAIMS  
BOARD MEETING MINUTES  
JUNE 5, 2013**

**1. CALL TO ORDER**

Chairman John Haycock called the meeting to order at 10:00 a.m. from the Las Vegas location. The meeting was conducted via videoconference with locations in Las Vegas, at the Nevada Department of Transportation Building, 123 E. Washington Ave., Building B, Training Room and in Carson City at the Nevada Department of Transportation Building, 1263 S. Stewart St., Room 301.

**A. BOARD MEMBERS PRESENT**

Chairman John Haycock, Representative of independent petroleum dealers  
Vice-Chairman George Ross, Representative of petroleum refiners  
Colleen Cripps, Ph.D., Nevada Division of Environmental Protection  
Maureen Tappan, Representative of the general public  
Wayne Seidel, Department of Motor Vehicles  
Peter Mulvihill, State Fire Marshal's Office  
Michael Cox, Representative of the independent retailers of petroleum

**BOARD MEMBERS ABSENT**

None

**OTHERS PRESENT**

Rose Marie Reynolds, State Attorney General's Office – Las Vegas  
Carolyn Tanner, State Attorney General's Office – Carson City  
Chad Schoop, Greg Lovato, Matt McAuliffe, Sandi Gotta, Steve Fischenich, Todd Croft,  
Valerie King, Victoria Joncas – Nevada Department of Environmental Protection  
(NDEP)  
Sarah Salcedo and Scott Keesey – Broadbent & Associates, Inc.  
Laura Joncas - Public

**Al Park Petroleum**

Joe McGinley and George Hagan - McGinley & Associates, Inc.  
Proctor Hug, Attorney – Representing Al Park Petroleum  
Galen Schorsch – Al Park Petroleum

Robert Bilbray – RB Properties, Inc.  
Rob Gegenheimer – Converse Consultants  
Keith Stewart – Stewart Environmental, Inc. (SEI)  
Rob Thompson – OGI Environmental LLC  
Jon Bell – Broadbent & Associates, Inc.

**2. PUBLIC FORUM**

There were no requests to speak.

3. **APPROVAL OF THE AGENDA**

**Mr. Seidel moved to approve the agenda. Ms. Cripps seconded the motion. There was no discussion. Motion carried unanimously.**

4. **APPROVAL OF THE MARCH 14, 2013 MINUTES**

**Ms. Tappan moved to approve the minutes. Mr. Cox seconded the motion. There was no discussion. Motion carried unanimously.**

5. **STATUS OF THE FUND**

Ms. King reported on the status of the State of Nevada Petroleum Fund (Fund) for fiscal year 2013, which runs from July 1, 2012 to June 30, 2013. She stated \$7.5 million was forwarded from fiscal year 2012. Approximately \$423,000 in fees had been collected for storage tank enrollment. Approximately \$8.4 million was collected from the ¾ cent per gallon fee and approximately \$23,000.00 in interest was earned.

Ms. King reported the expenditures so far are \$6,857,450.48 and the liabilities expected in 2013 are approximately \$5.5 Million. The actual funding available is \$9,518,306.95.

6. **AL PARK PETROLEUM APPEAL REGARDING NDEP'S DENIAL OF SMALL BUSINESS DESIGNATION REQUEST**

**Al Park Petroleum, Inc. Crescent Valley Market, located at 3093 Crescent Avenue, Crescent Valley, Nevada.**

**Facility ID No. 6-000318, Petroleum Fund Case ID No. 1995000039**

Ms. King presented this case to the Board. She broke it into four parts, a summary of how the small business process works, a brief history of the facility's release and cleanup, the Al Park small business request, and lastly the basis for NDEP's denial.

Ms. King explained that for a small business the \$50,000.00 deductible remains constant regardless of the number of tanks involved in a release and gave an example. To be designated, an operator's gross annual receipts must be \$500,000.00 or less per year for the five years prior to the release discovery.

Ms. King stated that providing the history of a case brought before the Board is consistent with standard practice:

- April 1994 – Approximately 100 gallons fuel released over a 24 hour period.
- May 1996 – Board approved Fund Coverage with 40% reduction due to spill reporting violations.
- 2005 (11 years later) – Data demonstrated plume had migrated off-site.
- June 2008 – NDEP issued formal enforcement action to Al Park for the Crescent Valley cleanup for repeated failure to initiate and maintain corrective action activities.
- December 2009 – A settlement agreement was reached with NDEP and Al Park which obligated NDEP to ask the Board to eliminate the 40% reduction. During this meeting the Board did not approve to eliminate the existing reduction.
- March 2010 – Board eliminated 40% reduction. Al Park now has full coverage with a 10% copayment.

- May 2010 – First remediation system was put into the ground.
- Current Status – Groundwater 100 feet below ground surface. Benzene approximately 20,000ppb, cleanup will be necessary for multiple years.

#### Al Park Request for a Small Business Designation:

- September 2012 – NDEP received Al Park's request for designation as a small business at the Crescent Valley site. Submitted tax forms were those of the market, not Al Parks.
- January 2013 – Al Park submitted a legal interpretation of the statutory definition of a "small business" which was new to NDEP and the AG's office. In the letter, Al Park agreed the operator's tax records were the records of relevance.
- NDEP believed this interpretation would result in an uneven playing field for all Nevada operators with the disadvantage going to the smaller businesses, which wasn't consistent with helping smaller businesses, but was convinced enough ambiguity was present that original denial may not be justified. NDEP consequently requested Al Park to submit its own relevant tax records.

#### NDEP Denied Al Park's request for a Small Business:

Al Park failed to submit the required tax forms from the site where the tank is located, and pursuant to NAC 590.714, NDEP denied the request. What Al Park did submit was a spreadsheet with a notarized affidavit from the company's CFO stating the income had been less than \$500,000 during the required time period. The time period reported was also not during the relevant timeframe.

Ms. Carolyn Tanner, with the Attorney General's (AG) office, provided further information.

Ms. Tanner discussed the May 29, 2013 letter submitted by Al Park's attorney, Proctor Hug.

Ms. Tanner stated the denial of Al Park's request had happened on two separate occasions. The first denial, sent from the AG's office, was not because Al Park did not submit gross annual receipts from its entire business, but because it submitted irrelevant tax records from the on-site market, which Al Park later agreed with. The AG's letter concluded with a paragraph stating the small business designation was meant to help the true small businesses. The subsequent letter from

Al Park focused primarily on that paragraph and not on the fact that irrelevant tax records had been submitted. The letter also emphasized the tax information had to be "from the site where the tank is located." NDEP responded by asking Al Park to submit its own tax records from the site. Ms. Tanner stated the tax information is non-discretionary and must be submitted using IRS forms. NDEP received no information in compliance with the regulation, including tax information for the relative timer period from 1989 – 1993. An affidavit is not verifiable.

Ms. Tanner stated that Al Park's position that the tax records were a technicality was not founded as the mechanism for verifying income is through an IRS record. Ms. Tanner stated that Al Park had been in the Fund since 1996 and had been on notice, since the designation regulation was adopted in 1996, of the compliance requirements associated with being designated a small business. When a larger business such as Al Park comes before the Board and states it cannot comply with the regulation, it speaks to the fact that that type of business was never intended to benefit from the small business designation.

Ms. Tanner stated that Al Park ignored the regulations for 16 years, which triggered an NDEP enforcement action. To come before the Board nearly 20 years later and state that too much time has passed, which is why the tax records have been destroyed, is disingenuous. Ms. Tanner cited a 1995 court case, Summa Corporation vs. Nevada Gaming Control Board (GCB). In this case, the Nevada Supreme Court upheld the GCB regulatory process because it had remained unchallenged and the GCB's action had remained unchanged by legislature for many years, which indicated the interpretation was consistent with the legislative intent. Ms. Tanner stated this case is similar to the case before the Board. The statute was adopted in 1995. Al Park

received coverage in 1996, which is the same year the small business designation regulation was codified. Al Park was on notice since 1996, and to come before the Board almost 20 years later and claim to be singled out, is not the case. If the records had been produced under the required scenario, NDEP would have designated Al Park as a small business at this site.

Al Park representatives then came before the Board. Mr. Proctor Hug, Al Park's attorney, Mr. Joe McGinley and George Hagan, the environmental consultants, and Mr. Schorsch, from Al Park. Mr. Hug began by discussing the two letters sent to NDEP and ensuring the Board had them. They did. He gave an overview why Al Park qualifies as a small business under the statute. Mr. Hug reviewed NRS 590.890 and its subsections. He stated NDEP's presentation focused only on the regulations and the implementation of the regulations, not the statute. He stated the way NDEP interprets the regulations violates the statute and impairs the right of the businesses that are granted a right under the statute. The regulation would be rendered invalid if that was the case. Mr. Hug read the definition of an operator. He stated NDEP conceded that Al Park is an operator and also during many conversations NDEP conceded that Al Park made less than \$500,000 in gross annual receipts from the site.

Mr. Cox asked if Al Park owned the store. Mr. Hug responded Al Park operated only the tanks, not the store.

Mr. Hug stated the definition of a small business does not require one to operate both the market and the tank. He stated the market owners rely on the fuel distributors to provide gas that they can then sell to consumers.

Mr. Cox asked why the owner of the market did not have the tanks enrolled in the Petroleum Fund.

Mr. McGinley stated his understanding is that Al Park filled out the 7530 form as the operator. A global settlement allowed them to receive full coverage from the fund and at this point, Al Park is not disputing ownership of the tanks.

Mr. Ross asked how the spill occurred.

Mr. McGinley said he was not a consultant at the time but the file reveals it was a single event of 100 gallons of fuel that released.

Mr. Hug stated Al Park simply provided the fuel to the site and did not do anything wrong to make the spill occur.

Mr. McGinley stated the tax returns are an issue that keeps coming up. It was a long time ago, but Al Park never filed for that facility, so the records never existed. It was just a facility that Al Park delivered fuel to which was a benefit to the community.

Mr. Ross stated he believed the need for the federal income tax returns was not an accident and was also not arbitrary and capricious. He stated if a business is a small business, then it will have tax returns to demonstrate it is a small business. He stated he reviewed the data and believed the lack of having the data was a key issue in this case.

Mr. Hug again reviewed the statutory definition of a small business. He asked if a business receives less than \$500,000 in gross receipts from that site but does not file income taxes that itemizes the revenue from that site, should it be precluded from being designated a small business?

Mr. Ross agreed that was the point of the case. He did not see evidence that this was run as a small business.

Mr. Hug countered that if Al Park made less than \$500,000 in gross annual receipts, under the statute, they are a small business. If they file income taxes that do not separate that revenue, now they cannot qualify under the regulation, so the regulation precludes a business that qualifies under the statute from qualifying. It asks for information that would not contain the relevant information to ascertain if it is a small business under the statute.

Mr. Ross referred to the May 28, 2013 letter, last paragraph on page 2. "Again the small business limitation in NRS 590.890.2 starts with the language "by an operator which is a small business." Therefore to be a small business one must satisfy the statutory definition of an operator."

Mr. Ross stated that this could be flipped around.

Mr. Hug stated first you have to be an operator and then you can be a small business.

Mr. Ross stated the reason it is in there is likely because the concern is about a small business.

Mr. Hug agreed, if it is a small business as defined in statute, which the legislature has chosen to define that way. He stated the legislature chose to define it that way to incentivize fuel distributors to provide fuel to rural communities. Without the \$50,000 deductible, there will not be an incentive and the Crescent Valley community will have to drive to Carlin to get their gas. He stated if this issue is about the "mom and pop" market, now they will not have gas to sell to their customers because there is no incentive for a fuel provider to deliver the gas. Mr. Hug stated he thinks that is why the legislature drafted it that way. He then referred to other sections of NRS 590.890. He stated the legislature understood how to define a small business in terms of the entire business. He read NRS 590.890.2 which refers to a company's net worth, which is not what the small business statute alludes to. Mr. Hug stated he thinks this is good policy that will incentivize the fuel distributor to provide fuel to rural communities and help the "mom and pop" shop, benefiting everyone.

Mr. Ross wanted to make it clear that the fuel distributor can get coverage. The small business designation saves the fuel distributor a "few tens" as opposed to millions of dollars.

Mr. Hug stated it is important to receive the incentive.

Mr. Cripps stated that if this incentive was as important in rural areas as Mr. Hug stated, we would have heard about this problem before now.

Mr. Hug said he could not speak to why it has not come up.

Ms. Cripps stated there are facilities in rural areas that have been receiving fuel in the last twenty years and this has not been an issue.

Mr. McGinley stated he has worked with other facilities that are small businesses. Al Park did not consider it before now.

Mr. Cox stated Al Park did not operate the store, just delivered fuel. He believed this situation does not happen often where the fuel distributor owns the tanks. He found this situation odd.

Mr. Hug agreed the situation is odd but that does not change the fact that Al Park should be designated a small business for that facility.



Ms. Cripps stated she did not know how NDEP could verify the information required by the regulations, which were adopted as a result of the statutes, and make a determination if the information was not provided.

Mr. McGinley stated he knew the tax records did not exist at that facility. Instead they determined the amount made today. Is it \$500,000? It is in the several thousand dollars. The economic conditions in Crescent Valley probably have not changed in the last 50 years. If they are at a few thousand right now, there is no way it was over \$500,000 in 1994. The Al Park CFO signed an affidavit to that end. They received records from the previous operators that helped to demonstrate this. The records were for 3 of the 5 required years. The operator is buying the fuel, marking it up and selling market items and the gross annual receipts were much less than \$500,000.

Ms. Cripps stated the regulation requires tax receipts.

Mr. Hug agreed that the tax receipts are required to implement the statute. He continued to explain that if that is the only way to comply with the statute, the regulation prohibits businesses that are granted a right under the statute from qualifying as a small business. A regulation that does that, as supported by case law across the country, is not valid.

Ms. Cripps stated she wanted to hear from the Attorney General's office regarding Mr. Hug's position.

Mr. Mulvihill stated he was concerned that Al Park knew what the documentation should be in 1996 and took this long to come forward with the argument. He stated they cited NRS 590.890 and believes the argument works against Al Park. Pursuant to NRS 590.890(2), he asked how many tanks Al Park operates in the State of Nevada.

Mr. Schorsch answered approximately (underground tanks) 8-12. He stated they only operate in Nevada. The Utah address is a truck shop in Salt Lake City which has no tanks.

Mr. Mulvihill stated the Crescent Valley hardship issue is not relevant because the market is not responsible for the cleanup. He stated that Al Park's argument is a distraction.

Mr. Hug stated the referenced hardship on the "mom and pop" store was the fact that if the fuel distributor did not qualify for the exemption, there would be no incentive to deliver fuel to that store, which would negatively impact the store.

Mr. Mulvihill stated if the "mom and pop" store was responsible for this and had the tax documentation, there would not be an issue. That it is not the case here. The regulation requirement is straight forward, has been known by industry since 1996, and he therefore did not know why a drastic and radical change should be made.

Mr. Hug stated a drastic and radical change is not requested. Typically the operator has both the tank and onsite store. It is a unique situation but does not change the fact that Al Park is a small business under the statute, and if the regulation, as implemented in Al Park's case, precludes them from qualifying, then it is invalid because it is impairing their statutory right.

Mr. Mulvihill stated Mr. Hug may need to go to District court or to the legislature to get the statute clarified or revised, but that is outside the purview of the Board.

Mr. Haycock asked if the federal tax requirement was specifically income tax and could a federal fuel tax schedule provide the information? He asked if these documents could substitute.

Ms. Reynolds cited NAC 590.714 in its entirety, which specifically identifies federal income tax forms.

Mr. Haycock asked the size of the breached tanks.

Mr. McGinley stated he believed the 2 tanks were both 2,000 gallons, both stored gasoline.

Mr. Haycock stated he is still unclear who the owner of the tanks was.

Mr. Hug stated both parties stipulated Al Park was the owner of the tanks in a settlement agreement that Mr. Haycock was a signatory to.

Mr. Haycock referred to two correspondences from Mr. Hug that stated Al Park did own the tanks. He stated he wanted to clarify the lapse in time and the cleanup, when it started and when it should have started.

Mr. McGinley gave the financial status. He stated Al Park has requested \$700,000. \$184,000 disallowed, the deductible is \$53,000 and \$470,000 has been reimbursed. The technical status is that groundwater is at 100 feet below ground surface. Efforts have been primarily focused on soil through a vacuum extraction system. Groundwater will be addressed using an air sparging system which will require a lot of money to install. In summary, the soil has been essentially addressed and there is quite a way to go for the groundwater.

Mr. Haycock asked what the reason for the lapse in time was for cleanup.

Mr. Schorsch responded the lapse occurred because there was question regarding who was responsible for the cleanup. There were many letters back and forth and attorney involvement.

Mr. Haycock asked Mr. McGinley about the previous small businesses he was involved with and if they were similar to this situation.

Mr. McGinley stated the two facilities he is familiar with owned and operated the tank on the site and any structures.

Mr. Haycock asked if they owned other facilities.

Mr. McGinley stated they both filed federal income tax forms for each of the sites.

Mr. Haycock referred to Mr. Ross' comments regarding the intent and that an actual small business would be required to file income taxes for its site. He stated a large business could qualify as a small business based upon the arguments presented.

Mr. Haycock commented on the volume reported by Al Park in its affidavit and received confirmation from Mr. Schorsch that the reported sales in 2002 were \$2,600.

Mr. Ross asked to speak to Ms. Tanner.

Mr. Cox asked if Al Park was the only distributor that delivered fuel to Crescent Valley Market.

Mr. Schorsch stated he believed so but was not certain.

Mr. Haycock asked if a contract was involved.

Mr. Schorsch replied there was not.

Mr. Cox asked why Al Park was the operator and was enrolled in the Petroleum Fund. He asked if that was part of keeping the ability to be the only one who was to deliver fuel to the market.

Mr. Schorsch responded that it may have been a factor.

Mr. Ross asked Ms. Tanner to provide the case law she had previously cited.

Ms. Tanner stated it was Summa Corporation, doing business as Desert Inn vs. the State Gaming Control Board and the Gaming Commission issued August 27, 1982 in the Nevada Supreme Court. A statute was adopted several years prior to the case that mandated the Commission to implement an accounting system of gross revenue for the casinos. The Commission adopted a regulation to implement the statute. The regulation was challenged many years later when a casino could not comply with it. The Supreme Court agreed with the district court that, because the regulation had not been challenged for years, and the Commission's actions had remained unchanged by subsequent legislative action, and the legislature had ample time to amend the administrative agency's reasonable interpretation of the statute but failed to do so, such acquiescence by the legislature indicates the interpretation of the Commission was consistent with the legislative intent. Ms. Tanner stated the NDEP's position regarding the request of all gross annual receipts from all of Al Park's businesses has morphed. NDEP ultimately asked for the gross receipts from the site where the tank is located. Al Park did not provide that information and NDEP has no discretion in requiring it.

Ms. Tanner also pointed out that the amendment in the 1995 statute regarding the small business has no legislative history or testimony documented. She stated that counsel's supposition that the intent was to incentivize anybody, including international fuel providers, is just that, "supposition." We do not know. An argument that cuts both ways for Al Park is that if the legislature intended for the gross annual receipts to be from both the market and the tank, it would have said so. By the same token, if the legislature intended for the relevant gross annual receipts to be solely from the tank, it would have said that too. If the legislature intended the benefit to be beyond true small businesses, it would have said so. This is not the "rural" business exemption. It is the "small business" exemption.

Ms. Tanner stated that Al Park focuses in its letter on NRS 590.810, legislative findings. But the subpart pointed out by Al Park states only part of the findings associated with funding the liability in which all engaged in the business must participate equitably. But if you go to the subpart above that, which was not addressed in Al Park's letter, #2 says federal law and regulations require each operator of a storage tank to show financial responsibility for this purpose, but the capital of smaller operators is too little to meet these requirements and insurance to cover this liability is prohibitively costly for these smaller operators." Ms. Tanner stated that anybody in a rural area could qualify pursuant to Al Park's interpretation, regardless if they were extremely profitable as a business, in its entirety. Ms. Tanner stated the citation gets to the point that the Board seems to be making with respect to its questions. She stated the citation identifies a small operator of a facility that must provide the gross receipts of the entire business associated with conveying fuel to the consumer.

Ms. Tanner addressed Ms. Cripps earlier question. She stated the statute incorporates a broad class and the statement that the regulation narrows that class is incorrect. The agency has broad authority to implement regulations in light of the understood policy behind the statute, which she submitted was what the regulations of concern did.

Ms. Tanner stated Al Park claimed they do not have the gross annual receipts for this facility based upon the type of business they are with multiple tanks, but they do not state that they cannot get those gross annual receipts. They have been on notice from the time they entered into the Fund that the receipts from that site alone are required in a request for a small business



designation. Because it is inconvenient, it was not done. Had they provided the gross annual receipts from that site, we would have likely designated them. The proposed resolution which will be discussed in Agenda item #7 does not apply to Al Park because with the identified ambiguity, we would have designated them a small business. She stated the regulation which requires gross annual receipts from a site is appropriate because it identifies "how" the gross annual receipts are to be tracked, which Al Park could have done. Al Park's excuse of too much time having gone by and the fact they were not required to track their gross annual receipts that way is not valid in this case.

Mr. Cox stated the problem he sees is that Al Park did not own the store. He stated the store should have the tanks under the Fund. He stated Al Park should not be the operator of the tank, the store should be.

Ms. Tanner mentioned the case filed in Elko County against Al Park whereby Al Park denied ownership of the tank. Al Park originally signed a federal form as the owner and had a business model where they were the sole provider of fuel for the facility and would take ownership of the tank. This business model does not excuse them from complying with the regulations in place.

Mr. Cox stated Al Park had no control of what is happening at the store and yet has to clean up the spill. Thankfully the fund is in place to help with the expenses.

Mr. Mulvihill stated that regulations are adopted transparently. As the State Fire Marshall, he adopts regulations under authority from statutes adopted by the legislature and signed by the governor. The legislative branch of government is heavily involved in agencies making rules. Legal staff at LCB reviews and ensures the regulations are aligned with statutes. After public workshops/hearings, the LCB staff then takes it before a legislative committee, which is made of elected officials. They review it and ask the tough questions regarding how the regulation meets the legislative intent. He stated the regulation process is not done in a vacuum and has legislative buy-in. Mr. Mulvihill stated the allegation that the NDEP did something wrong when codifying the regulation and the fact the regulation had not been challenged before makes Al Park's allegation a distraction.

Mr. Haycock stated Mr. Mulvihill's point was good. He said the Board cannot interpret a statute strictly and a regulation loosely.

Mr. Seidel asked what the dollar amount being discussed was.

Mr. King responded that because two tanks were involved Al Park has a \$2 million dollar Fund cap. She stated Al Park currently has a \$200,000 copayment. If designated a small business, they would only have a \$50,000 deductible, which is a savings of \$150,000. She stated the Fund has paid \$545,000, Al Park has paid \$54,000.

Mr. McGinley commented that Al Park has requested \$730,000. They are currently \$300,000 out of pocket.

Ms. Reynolds stated the motion must be to either grant or not grant the Al Park appeal regarding NDEP's denial of its small business designation request.

**Mr. Mulvihill made a motion to uphold NDEP's determination to deny the Al Park small business designation. Mr. Ross seconded the motion.**

Mr. Seidel commented that he believed the intent of the Fund is to help. This is an exception to all of the rules which we will not see very often. He stated with the information we have, Al Park should be a small business based upon the tanks in Crescent Valley. Mr. Seidel stated he will be voting "no."

**Mr. Wayne Seidel opposed.**

**The motion carried, 6-1.**

**7. PROPOSED BOARD RESOLUTION #2013-01 – SMALL BUSINESS DESIGNATION PROCESS**

Ms. King presented the proposed Resolution #2013-01. She stated the proposed resolution is to clarify the statutory definition and requirements for the small business designation using existing regulations. She described the purpose of the small business designation, which is to limit the out of pocket expenses to \$50,000 for a cleanup.

Ms. King identified a handout with a pictorial (Attached). She stated the pictorial identifies what NDEP perceives the problem to be. The handout had two scenarios. One scenario was a traditional "mom and pop" situation where the operator was the same for both the market and the tank. The other scenario had different operators for the market and the tank. Ms. King explained if a release occurred and Petroleum Fund coverage was obtained, both sites could submit a request to NDEP for a small business designation. The difference would be that the traditional operator would have to submit gross annual receipts from the entire site, both fuel sales and market sales combined, and the other facility, which has different operators, would only have to submit gross annual receipts from the fuel sales. This would put the facility with different operators at an unfair advantage because the likelihood of having gross annual receipts less than \$500,000 would be better for the tank operator as he would not have to combine the revenue from both fuel sales and market sales like the other facility, even though the customer base was the same for both.

Ms. King stated NDEP did not believe this situation was the intent of the small business designation process. She stated NDEP set out to resolve this issue. She stated NDEP conducted public outreach, did its own research, and received input from the Attorney General's office. She stated NDEP's position evolved as new information was obtained. This was a new concept to NDEP and took time to evolve. She stated NDEP feels the position on this issue is now legally defensible.

Ms. King stated Nevada has three active small businesses in the Petroleum Fund program. She stated there are approximately 465 franchises in Nevada with USTs. This would have a worst case scenario of approximately \$23 million dollars to the Fund. Although this impact would probably not occur, it provides the reason why NDEP is concerned.

Ms. King stated with all of the information we now have, we believe the situation described with the two operators and the unfair advantage of being designated a small business cannot occur, and Ms. Tanner is here to explain why.

Ms. Tanner stated this is a separate issue from the previous agenda item. However, she mentioned that Al Park had submitted a letter commenting on the proposed resolution, which she would address. Ms. Tanner stated the requirement of gross receipts from the site where the tank is located is clear in the statute. The definition of operator is also clear. She stated Al Park has taken the position that there is nothing in the statute that says the operator must also operate the market associated with the tanks. They ignore the regulations, which are not mere technicalities nor can be ignored. The regulation defines "site." It is a facility on multiple parcels or the same parcel that the tank is located on. It is not defined as the "leaking tank." There is no definition of facility in statute or regulation. By common definition, it is the business engaged in selling the fuel to the consumer that is relevant. The proposed resolution highlights the fact that this process is to benefit a single brick and mortar operator.

She provided an example similar to the example in the pictorial attachment. She concluded the resolution seeks to address that issue, which may be unique, but is possible and NDEP believes it violates the intent of the statute. It is clearly the intent of the legislature for the program as a whole to benefit small businesses, and the small business designation is a smaller piece of that. The citation read in the previous agenda item, NRS 590.810, clarifies this. Ms. Tanner emphasized that this is not the "rural operator" business exemption, it is the "small operator" business exemption. We believe this resolution can narrow the focus to those businesses that it is designed to benefit.

Ms. King asked to read a letter into the record that is in support of the resolution. The letter is dated June 4, 2013 and is signed by Mr. Peter Krueger on behalf of the Nevada Petroleum Marketers & Convenience Store Association (Attached).

Mr. Haycock asked if this resolution assumes retail operations. The tank is there to provide fuel to a consumer. He asked if there would be a difference with a contractor who had a tank onsite with a UST.

Ms. King stated whoever has responsibility for the tank would have to provide the receipts.

Mr. Haycock stated the gross receipts would not be for fuel sales.

Ms. Tanner asked for clarification.

Mr. Haycock described a scenario where a company owned a fleet of three trucks and used the UST fuel to fill those trucks but gross receipts came from hammering boards together.

Ms. King responded that whoever owns the tank is responsible. That person would have to provide the gross annual receipts for any revenue at that site.

Mr. Mulvihill asked if the regulations should be revised to make it more clear with respect to the LCB involvement and industry involvement. He asked if NDEP was going to address any regulation changes.

Ms. King stated that NDEP management would need to be consulted on this issue but there are some housekeeping items that currently need to be addressed and this may be the trigger to do it.

Mr. Ross stated he agreed with Mr. Mulvihill, but felt we should also review the statutes. He stated they should be in concert. He also stated we should evaluate if the \$500,000 value for the small business criteria is still appropriate.

Ms. King stated it is a statute and NDEP would have to weigh it, but it makes sense.

Ms. Tanner stated part of the goal is to bridge the gap if needed. We will have to wait for two years if we have a problem down the road.

Mr. Ross said 18 months is a lot of time to figure out what we want to do.

Ms. King stated that NDEP was originally trying to resolve this issue through a regulation change but realized a resolution would be a more efficient but just as effective fix to bridge the gap. She said his point was well taken and we would look at the regulations sooner than later.

Mr. Haycock asked if the public would like to address the Board. No one wished to speak.

**Ms. Tappan made a motion to approve Resolution 2013-01 for designating a small business. Dr. Cripps seconded the motion. The motion carried unanimously.**

Mr. Bilbray approached the Board and indicated the Consent Items list had his business listed incorrectly. He asked to change the ownership of the store to RB Partners, Inc.

Ms. King responded for Mr. Bilbray to contact her and get a new vendor form filled out.

**8. ADOPTION OF CONSENT ITEMS**

The Board will review all items as a consent calendar item, unless the item is marked by an asterisk (\*), or a member of the public wishes to speak in regards to the item.

A dagger (†) indicates previously disallowed monies have been appealed where the requested amount is less than the recommended amount.

A dollar (\$) sign indicates the March 14, 2013 Board-approved refund of \$185,879.50 plus recommended claim amount of \$14,090.16.

**STATE BOARD TO REVIEW CLAIMS  
REQUESTED/RECOMMENDED AMOUNTS – JUNE 5, 2013**

| <b><u>HEATING OIL</u></b> |    |              | <b><u>REQUESTED</u></b>              | <b><u>RECOMMENDED</u></b> |
|---------------------------|----|--------------|--------------------------------------|---------------------------|
| FOR POSSIBLE ACTION       | 1. | 19920000102H | \$9,354.22                           | \$9,354.22                |
| FOR POSSIBLE ACTION       | 2. | 2007000013H  | \$14,532.62                          | \$14,515.16               |
| FOR POSSIBLE ACTION       | 3. | 2012000007H  | \$9,856.50                           | \$9,856.50                |
| FOR POSSIBLE ACTION       | 4. | 2012000017H  | \$13,115.05                          | \$12,459.30               |
| FOR POSSIBLE ACTION       | 5. | 2013000012H  | \$14,583.50                          | \$14,583.50               |
|                           |    |              |                                      |                           |
|                           |    |              | <b><u>HEATING OIL SUB TOTAL:</u></b> | <b><u>\$60,768.68</u></b> |

**NEW CASES, OTHER PRODUCTS**

|                     |    |            |  |                            |
|---------------------|----|------------|--|----------------------------|
| FOR POSSIBLE ACTION | 1. | 2013000004 | <b><u>REQUESTED</u></b>                            | <b><u>RECOMMENDED</u></b>  |
| FOR POSSIBLE ACTION | 2. | 2013000005 | \$25,945.35  | \$23,350.81                |
| FOR POSSIBLE ACTION | 3. | 2013000008 | \$23,950.64  | \$21,555.58                |
| FOR POSSIBLE ACTION | 4. | 2013000010 | \$30,284.78  | \$27,256.30                |
| FOR POSSIBLE ACTION | 5. | 2013000011 | \$40,433.04  | \$29,111.79                |
|                     |    |            | \$55,662.68  | \$50,096.41                |
|                     |    |            |  |                            |
|                     |    |            | <b><u>NEW CASES, OTHER PRODUCTS SUB TOTAL:</u></b> | <b><u>\$151,370.89</u></b> |



**ONGOING CASES/OTHER PRODUCTS**

|                     |       |            |
|---------------------|-------|------------|
| FOR POSSIBLE ACTION | 1.    | 1993000011 |
| FOR POSSIBLE ACTION | 2.†   | 1993000102 |
| FOR POSSIBLE ACTION | 3.    | 1993000103 |
| FOR POSSIBLE ACTION | 4.    | 1993000115 |
| FOR POSSIBLE ACTION | 5.*   | 1994000003 |
| FOR POSSIBLE ACTION | 6.    | 1994000029 |
| FOR POSSIBLE ACTION | 7.    | 1994000037 |
| FOR POSSIBLE ACTION | 8.†   | 1994000065 |
| FOR POSSIBLE ACTION | 9.*   | 1994000113 |
| FOR POSSIBLE ACTION | 10.   | 1994000120 |
| FOR POSSIBLE ACTION | 11.   | 1994000122 |
| FOR POSSIBLE ACTION | 12.   | 1995000012 |
| FOR POSSIBLE ACTION | 13.   | 1995000039 |
| FOR POSSIBLE ACTION | 14.   | 1995000074 |
| FOR POSSIBLE ACTION | 15.   | 1995000105 |
| FOR POSSIBLE ACTION | 16.   | 1996000010 |
| FOR POSSIBLE ACTION | 17.   | 1996000063 |
| FOR POSSIBLE ACTION | 18.\$ | 1996000064 |
| FOR POSSIBLE ACTION | 19.   | 1996000101 |
| FOR POSSIBLE ACTION | 20.   | 1996000102 |
| FOR POSSIBLE ACTION | 21.   | 1997000008 |
| FOR POSSIBLE ACTION | 22.   | 1998000034 |
| FOR POSSIBLE ACTION | 23.*  | 1998000046 |
| FOR POSSIBLE ACTION | 24.   | 1998000068 |
| FOR POSSIBLE ACTION | 25.   | 1998000073 |
| FOR POSSIBLE ACTION | 26.*  | 1999000011 |
| FOR POSSIBLE ACTION | 27.   | 1999000014 |
| FOR POSSIBLE ACTION | 28.*  | 1999000022 |
| FOR POSSIBLE ACTION | 29.*  | 1999000029 |
| FOR POSSIBLE ACTION | 30.   | 1999000048 |
| FOR POSSIBLE ACTION | 31.   | 1999000052 |
| FOR POSSIBLE ACTION | 32.   | 1999000064 |
| FOR POSSIBLE ACTION | 33.   | 1999000066 |
| FOR POSSIBLE ACTION | 34.   | 1999000086 |
| FOR POSSIBLE ACTION | 35.   | 1999000090 |

**REQUESTED**

|   |              |
|---|--------------|
| 7-Eleven, Inc.: 7-Eleven #29646                     | \$17,526.30  |
| Rebel Oil Company: Rebel #8                         | \$0.00       |
| Russell Yardley: Charlie Brown Construction         | \$43,583.35  |
| City of Fallon: Former Bootlegger Texaco            | \$5,533.38   |
| Allied Washoe: Allied Petroleum                     | \$6,362.99   |
| 7-Eleven, Inc.: 7-Eleven #20826                     | \$27,669.12  |
| Param Investment, LLC: Gofer Market                 | \$16,146.50  |
| Avis Rent A Car Systems: Avis Rent A Car            | \$33,986.03  |
| Pilot Travel Centers, LLC: Former Unocal Truck Stop | \$22,251.80  |
| Chevron Env. Management Co.: Union 76 Station #3846 | \$82,707.24  |
| Mike's Gas-A-Mart: Mike's Gas-A-Mart                | \$6,830.12   |
| N Nevada Asset Holdings LLC: Parker's Model T       | \$8,078.10   |
| Al Park Petroleum, Inc.: Crescent Valley Market     | \$19,375.82  |
| Vera Hester: Glendale Service Facility              | \$26,740.17  |
| Redman Petroleum Corp.: Redman Petroleum            | \$8,982.53   |
| Wayne Perry, Inc.: Texaco #175                      | \$42,455.04  |
| Joan Pennachio: V&V Automotive                      | \$4,697.25   |
| H&A Esslinger, LLC: Red Rock Mini Mart              | \$200,781.00 |
| Phillips 66 Company: Circle K #695                  | \$15,266.53  |
| Phillips 66 Company: Circle K #542                  | \$1,263.80   |
| Ewing Brothers, Inc.: Ewing Brothers Facility       | \$3,180.50   |
| Chevron USA Products Co.: Chevron #9-4116           | \$43,369.91  |
| Willdens Automotive Holdings: Allstate Rent A Car   | \$134,813.23 |
| Phillips 66 Company: Conoco #28003                  | \$21,906.04  |
| City of Reno: Reno Police Station                   | \$3,249.54   |
| Terrible Herbst Oil Company: Terrible Herbst #133   | \$23,125.00  |
| Al Park Petroleum: Conoco Pit Stop #7               | \$21,145.08  |
| Terrible Herbst Oil Company: Terrible Herbst #129   | \$26,949.13  |
| Terrible Herbst Oil Company: Terrible Herbst #136   | \$5,315.29   |
| Estate of Robert Cowan: Former Lightning Lube       | \$5,141.38   |
| Estate of Martin T. Wessel: Ted's Chevron           | \$13,989.06  |
| Al Park Petroleum, Inc.: Conoco Pit Stop            | \$20,277.85  |
| John Haycock: Former Haycock Petroleum              | \$13,980.30  |
| Terrible Herbst Oil Company: Terrible Herbst #126   | \$17,460.63  |
| John Haycock: Former Haycock Petroleum              | \$13,938.55  |

**RECOMMENDED**

|              |              |
|--------------|--------------|
| \$17,526.30  | \$17,526.30  |
| \$0.00       | \$100.25     |
| \$43,583.35  | \$42,711.68  |
| \$5,533.38   | \$5,533.38   |
| \$6,362.99   | \$6,362.99   |
| \$27,669.12  | \$21,957.55  |
| \$16,146.50  | \$16,146.50  |
| \$33,986.03  | \$43,119.53  |
| \$22,251.80  | \$22,251.80  |
| \$82,707.24  | \$74,436.52  |
| \$6,830.12   | \$6,830.12   |
| \$8,078.10   | \$7,290.17   |
| \$19,375.82  | \$17,438.24  |
| \$26,740.17  | \$21,012.90  |
| \$8,982.53   | \$8,084.27   |
| \$42,455.04  | \$34,661.51  |
| \$4,697.25   | \$4,227.53   |
| \$200,781.00 | \$199,969.66 |
| \$15,266.53  | \$13,739.88  |
| \$1,263.80   | \$910.08     |
| \$3,180.50   | \$2,862.45   |
| \$43,369.91  | \$38,810.65  |
| \$134,813.23 | \$121,331.91 |
| \$21,906.04  | \$19,715.44  |
| \$3,249.54   | \$3,249.54   |
| \$23,125.00  | \$20,812.50  |
| \$21,145.08  | \$19,030.58  |
| \$26,949.13  | \$19,686.27  |
| \$5,315.29   | \$4,783.76   |
| \$5,141.38   | \$5,141.38   |
| \$13,989.06  | \$12,590.15  |
| \$20,277.85  | \$17,684.87  |
| \$13,980.30  | \$12,582.27  |
| \$17,460.63  | \$15,714.57  |
| \$13,938.55  | \$12,544.70  |

**ONGOING CASES/OTHER PRODUCTS: CONTINUED**

|                     |      |            |   |              |              |
|---------------------|------|------------|---|--------------|--------------|
| FOR POSSIBLE ACTION | 36.  | 1999000104 | Terrible Herbst Oil Company: Terrible Herbst #118       |              |              |
| FOR POSSIBLE ACTION | 37.  | 1999000114 | City of Fallon: Fallon Maintenance Yard                 | \$43,243.26  | \$38,792.93  |
| FOR POSSIBLE ACTION | 38.  | 1999000135 | Terrible Herbst Oil Company: Terrible Herbst #106       | \$5,329.31   | \$4,796.38   |
| FOR POSSIBLE ACTION | 39.* | 1999000137 | Terrible Herbst Oil Company: Terrible Herbst #152       | \$9,078.23   | \$8,170.40   |
| FOR POSSIBLE ACTION | 40.  | 1999000167 | City of Las Vegas: Fire Station #1                      | \$24,477.17  | \$23,289.59  |
| FOR POSSIBLE ACTION | 41.  | 1999000186 | Gloria Gayle Pilger: Forger D&G Oil Facility            | \$6,930.10   | \$6,930.10   |
| FOR POSSIBLE ACTION | 42.  | 1999000199 | Mary Ann Ferguson: Lakeshore Orbit Station              | \$32,885.32  | \$29,592.29  |
| FOR POSSIBLE ACTION | 43.  | 1999000243 | 7-Eleven, Inc.: 7-Eleven #27607                         | \$88,717.03  | \$88,717.03  |
| FOR POSSIBLE ACTION | 44.  | 1999000257 | University of Nevada: Newlands Agriculture              | \$18,433.20  | \$9,953.93   |
| FOR POSSIBLE ACTION | 45.  | 1999000273 | V.K. Leavitt: The Waterhole                             | \$111,669.00 | \$111,669.00 |
| FOR POSSIBLE ACTION | 46.* | 2004000011 | William Rodriguez: Four Way Truck Stop                  | \$33,964.45  | \$21,882.66  |
| FOR POSSIBLE ACTION | 47.  | 2004000013 | NV Nanak Petroleum, Inc.: Nevada Nanak Petroleum        | \$37,482.11  | \$27,029.44  |
| FOR POSSIBLE ACTION | 48.* | 2004000025 | Scott Snow: Former ARCO #1580                           | \$4,817.50   | \$2,601.45   |
| FOR POSSIBLE ACTION | 49.  | 2004000039 | Clark Co. Dept. of Aviation: Former National Car Rental | \$38,023.62  | \$33,880.12  |
| FOR POSSIBLE ACTION | 50.  | 2005000002 | Carson Valley Oil Co., Inc.: Carson Valley Oil          | \$266,557.55 | \$243,418.42 |
| FOR POSSIBLE ACTION | 51.  | 2005000004 | 7-Eleven, Inc.: 7-Eleven #21285                         | \$23,682.85  | \$21,314.57  |
| FOR POSSIBLE ACTION | 52.  | 2005000025 | Bordertown, Inc.: Winner's Corner                       | \$5,400.05   | \$4,860.05   |
| FOR POSSIBLE ACTION | 53.  | 2005000029 | Phillips 66 Company: Circle K #1302                     | \$6,035.79   | \$5,432.21   |
| FOR POSSIBLE ACTION | 54.  | 2005000036 | Phillips 66 Company: Circle K #1791                     | \$5,509.68   | \$4,958.71   |
| FOR POSSIBLE ACTION | 55.  | 2005000044 | Ewing Brothers, Inc.: Ewing Brothers Facility           | \$2,939.35   | \$2,116.33   |
| FOR POSSIBLE ACTION | 56.* | 2007000002 | Consolidated Nevada Corp.: Berry-Hinckley #201          | \$16,391.93  | \$13,277.47  |
| FOR POSSIBLE ACTION | 57.  | 2007000014 | Ace Cab Company: Ace Cab Company                        | \$6,504.89   | \$5,847.16   |
| FOR POSSIBLE ACTION | 58.  | 2007000016 | TOC Holdings Company: Former Time Oil #6-100            | \$23,937.05  | \$21,543.34  |
| FOR POSSIBLE ACTION | 59.  | 2007000023 | 7-Eleven, Inc.: 7-Eleven #29643                         | \$26,343.15  | \$23,708.83  |
| FOR POSSIBLE ACTION | 60.  | 2008000005 | Avis Rent A Car Systems: Former Avis Rent A Car         | \$12,423.71  | \$8,942.38   |
| FOR POSSIBLE ACTION | 61.  | 2008000017 | Francois Alvandi: Flamingo AM/PM #82153                 | \$3,892.99   | \$3,503.69   |
| FOR POSSIBLE ACTION | 62.  | 2008000018 | B-H Ind. dba Terrible's: Terrible Herbst #830           | \$92,934.94  | \$50,175.35  |
| FOR POSSIBLE ACTION | 63.  | 2009000009 | Mr. Tom Schwarz: Zak's Mini Mart                        | \$25,469.07  | \$22,922.17  |
| FOR POSSIBLE ACTION | 64.† | 2009000017 | D&J Holdings, LLC: Convenience Corner Shell             | \$21,000.62  | \$15,120.45  |
| FOR POSSIBLE ACTION | 65.  | 2009000020 | Western Energetix: Flyers Energy Bulk Plant             | \$21,668.75  | \$22,410.88  |
| FOR POSSIBLE ACTION | 66.* | 2009000023 | Samir Shushani: Stop & Save Mini Mart                   | \$11,002.23  | \$9,902.00   |
| FOR POSSIBLE ACTION | 67.  | 2009000024 | Parampreet Investment, LLC: Chuck's Circle C            | \$6,270.00   | \$3,385.80   |
| FOR POSSIBLE ACTION | 68.  | 2009000028 | Vegas Rainbows, Inc.: Mick & Mac's Food Mart            | \$22,611.48  | \$20,350.33  |
| FOR POSSIBLE ACTION | 69.  | 2010000001 | Smitten Oil & Tire Company: The Gas Store               | \$17,892.70  | \$15,692.73  |
| FOR POSSIBLE ACTION | 70.  | 2010000005 | 7-Eleven Inc.: 7-Eleven #27071                          | \$5,754.70   | \$5,179.23   |
|                     |      |            |   | \$6,316.72   | \$5,685.05   |

**ONGOING CASES/OTHER PRODUCTS: CONTINUED**

|                     |                 | <b><u>REQUESTED</u></b> | <b><u>RECOMMENDED</u></b> |
|---------------------|-----------------|-------------------------|---------------------------|
| FOR POSSIBLE ACTION | 71. 2010000007  | \$134,403.94            | \$120,111.09              |
| FOR POSSIBLE ACTION | 72.* 2010000009 | \$15,112.60             | \$12,241.21               |
| FOR POSSIBLE ACTION | 73. 2010000013  | \$37,080.30             | \$33,372.27               |
| FOR POSSIBLE ACTION | 74. 2011000001  | \$14,955.52             | \$13,459.96               |
| FOR POSSIBLE ACTION | 75. 2011000009  | \$9,012.06              | \$8,110.86                |
| FOR POSSIBLE ACTION | 76. 2012000003  | \$3,808.42              | \$2,742.07                |
| FOR POSSIBLE ACTION | 77. 2012000004  | \$62,823.38             | \$40,383.02               |
| FOR POSSIBLE ACTION | 78. 2012000005  | \$145,928.53            | \$131,974.31              |
| FOR POSSIBLE ACTION | 79. 2012000011  | \$3,078.25              | \$2,770.43                |
| FOR POSSIBLE ACTION | 80. 2012000012  | \$14,470.19             | \$13,023.17               |
| FOR POSSIBLE ACTION | 81.* 2012000018 | \$11,816.70             | \$8,508.02                |
| FOR POSSIBLE ACTION | 82. 2012000019  | \$6,541.00              | \$5,886.90                |
| FOR POSSIBLE ACTION | 83. 2012000020  | \$6,888.04              | \$6,199.23                |
| FOR POSSIBLE ACTION | 84. 2012000022  | \$23,376.30             | \$21,038.67               |
| FOR POSSIBLE ACTION | 85. 2013000009  | \$32,297.74             | \$29,067.97               |

**ONGOING CASES/OTHER PRODUCTS SUB TOTAL:****\$2,565,262.03****REQUESTED****RECOMMENDED****CLAIMS TOTAL:****\$2,802,980.41**

Chairman Haycock informed the Board that under Ongoing Cases C, item numbers 33 and 35, because he is involved and his vote will therefore not relate to those two items.

Vice Chairman Ross informed the Board that under Ongoing Cases C, item number 57, Ace Cab Company is still being represented by a member of the law firm by which he is employed. However, he stated this associate has no bearing on his employment or pay so he will vote.

Michael Cox informed the Board that under Ongoing Cases C, item number 5, because he is the principal of the company and he will not vote on that item.

**Mr. Seidel moved for approval of the consent items, Heating Oil, 1 through 5, New Cases/Other Products, 1 through 5, Ongoing Cases/Other Products, 1 through 85. Mr. Mulvihill seconded the motion.**

**Motion carried unanimously.**

**9. EXECUTIVE SUMMARY**

Ms. King presented the Executive summary and informed the Board that the Petroleum Fund (Fund) was established in 1989. Since then 1,425 cases have been evaluated for reimbursement, 122 cases were denied coverage and a total of 1,054 cases have been closed. 7 applications are in pending status awaiting staff review or additional information. 45 cases have expired. The State Fiscal Year 2013 began on July 1 of this year, and since that time 19 new cases have been received by NDEP for evaluation of Fund coverage. There are currently 196 active remediation sites expected to continue with requests for reimbursement.

Not including today's Board authorization, approximately \$171.6 million has been reimbursed. Adding today's reimbursement, approximately \$2.48 million has been reimbursed from the Fund to date. The cumulative Fund expenditure is approximately 174.1 million.

The invoicing for storage tank Fund enrollment for Federal fiscal year 2013, which runs from October 1, 2012 through September 30, 2013, commenced on August 19, 2012. 1,409 facilities have been invoiced at \$100 per storage tank system. As of February 12, 2013, 1,333 facilities, or approximately 95% have submitted the required fees.

Ms. King introduced the newest Petroleum Fund staff member to the Board, Mr. Matt McAuliffe, at the meeting.

**10. PUBLIC FORM**

There were no requests to speak.

**11. CONFIRMATION OF NEXT BOARD MEETING DATE**

It was confirmed the next meeting date would be Thursday, September 12, 2013 at 10:00 am.

**12. ADJOURNMENT**

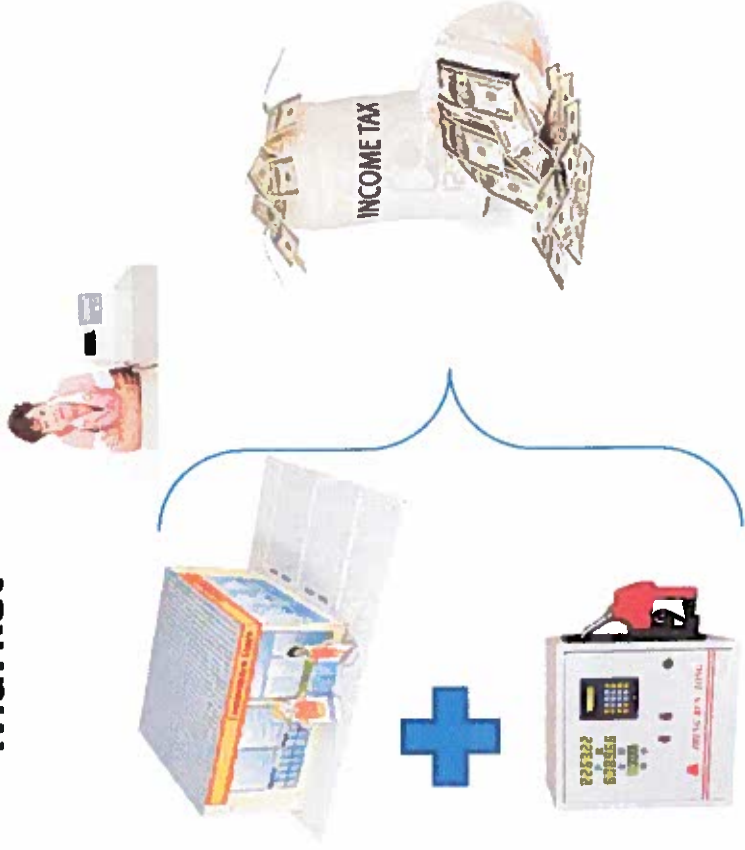
There being no further business, the meeting adjourned at 12:07 pm.



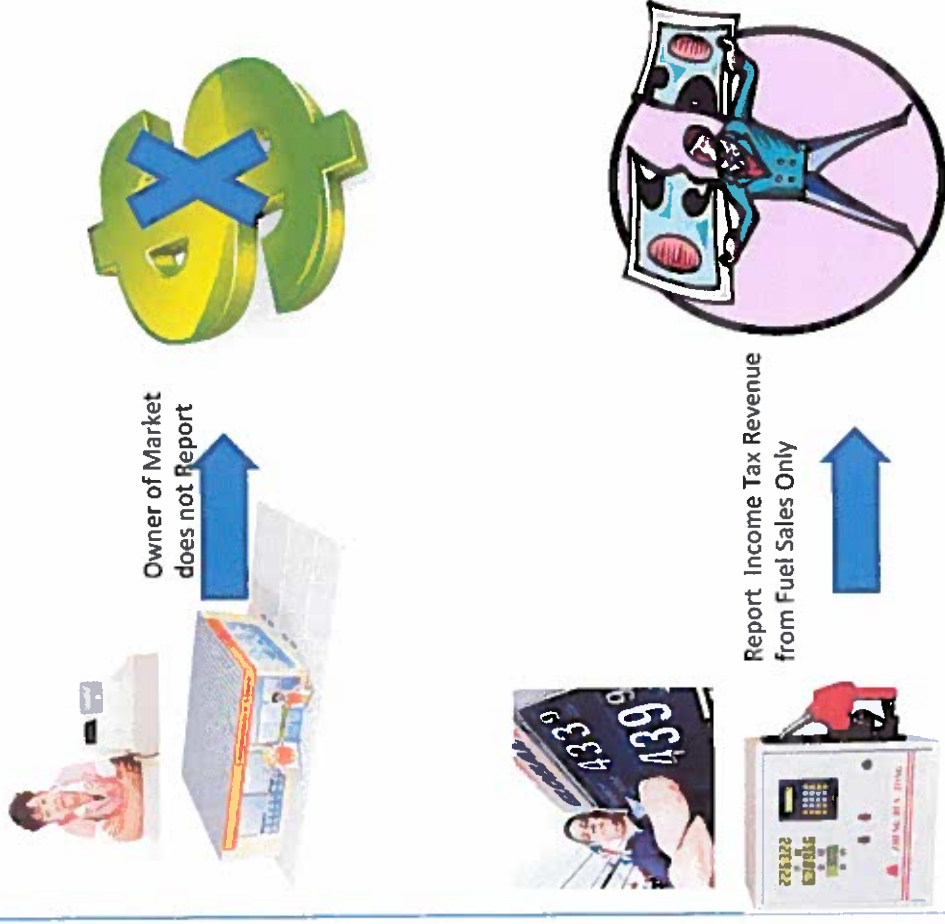


# Small Business Designation when a Release has Occurred and Fund Coverage is Received

**Same Operator for Tank and  
Market**



**Different Operators for Tank and  
Market**



# Regulation for Designating a Small Business

**NAC 590.714** – Operator must submit copies of forms reporting federal income tax, **from the site where the tank is located**, which show the **OPERATOR'S** gross annual receipts for 5 years immediately preceding the date on which the discharge was discovered

**NAC 590.710(1)(e)** – Definition of “Site” – the **FACILITY**, whether situated on a single parcel or on multiple adjacent parcels, where the tank is located

- For the Purpose of a Small Business Designation, by regulatory definition, a “site” is a **FACILITY** within a delineated area that the tank is also located within.
- Therefore: If gross annual receipts must be provided for the “site,” the receipts must represent the entire “facility.”
- If a facility has **Separate Operators** for the tank and market, the gross annual receipts from the tank operator will not represent the market’s revenue, and therefore will not comply with the regulatory requirements for submittal of a designation request.
  - The tank operator, who is responsible for the cleanup, only has receipts for a **PORTION** of the facility, not the entire facility, as required.







# NEVADA PETROLEUM MARKETERS & CONVENIENCE STORE ASSOCIATION

200 S Virginia St Ste 800 • Reno, Nevada 89501 • (775) 398-3000 • Fax: (775) 686-2478 • e-mail: [peter@fuelingnevada.com](mailto:peter@fuelingnevada.com)

## OFFICERS

**John Saxon**  
*President*  
Thomas Petroleum  
Las Vegas

**Mark Lytle**  
*Vice President*  
Pro Petroleum  
Las Vegas

**Gregg Benson**  
*PMAA Director*  
Rebel Oil  
Las Vegas

**Peter D. Krueger**  
*Executive Director*  
NPM&CSA  
Reno

## DIRECTORS

**Tom Cotrell**  
Morton's Truck Stops  
North Las Vegas

**Chris Kemper**  
Terrible Herbst Oil  
Las Vegas

**Gregory Michael**  
River City Petroleum  
W Sacramento, CA

**Bob Prary**  
Flyers Energy  
Sparks

**Lawrence Waugh**  
Flyers Energy  
Sparks

## PAST PRESIDENTS

|                 |         |
|-----------------|---------|
| Keith Stewart   | 2008/10 |
| Tim Herbst      | 2006/08 |
| Mike Zunini     | 2004/06 |
| Lyle Norcross   | 2002/04 |
| Dennis Moothart | 2000/02 |
| • Jim Denham    | 1998/00 |
| Bryan Reed      | 1996/98 |
| Don Pollock     | 1994/96 |
| Tom Cotrell     | 1992/94 |
| Art Hinkley     | 1990/92 |
| John Haycock    | 1988/90 |
| • Jim Smitten   | 1986/88 |
| Jon Madsen      | 1985/86 |
| • Darwin Pilger | 1983/85 |
| Jim Kuraisa     | 1982/83 |
| Clair Haycock   | 1981/82 |
| • Archie Lani   | 1980/81 |
| • Cort Bishop   | 1979/80 |
| • Archie Lani   | 1978/79 |

\*Deceased

June 4, 2013

Mr. John Haycock, Chairman  
Board to Review Claims  
Nevada Division of Environmental Protection  
Carson City, Nevada 89702

Dear Mr. Haycock:

The Nevada Petroleum Marketers & Convenience Store Association (NPM&CSA) would like to go on record as supporting Board Resolution number 2013-01 Small Business Exemption

NPM&CSA has been involved with the cleanup fund since its inception. We are on record as supporting the concept of an exemption and reduction of certain fees associated with the cleanup of a leaking underground storage tank at small businesses. We don't not believe it was ever the intend of the Board to Review Claims to apply the small business exemption to anyone other than an owner/operator of a single site where the total revenue from all business activities would be considered in making the small business exemption determining.

Thus we support the further clarification of this policy contained in Resolution 2013-01.

Sincerely,

Peter D. Krueger  
Executive Director  
NPM&CSA

